

own efforts. However, it is recognized that in the case of construction management contracts, the actual construction work will be performed by subcontractors. In most cases the subcontract awards for the construction work will be made by the construction management contractor. Occasionally the contract may involve management of construction performed under a contract awarded by the Department or by one of the Department's operating contractors. In these cases, the actual cost of the subcontracted construction work shall be excluded from the fee base used to determine the maximum basic fee (under the Construction Management Contracts Schedule) applicable to a construction management contract. A separate fee base for additional allowances (using the Special Equipment Purchases or Subcontract Work Schedule) shall be established, which shall be comprised of those subcontract construction costs, special equipment purchases, and other items' costs that are contracted for or purchased by the construction manager.

[49 FR 11955, Mar. 28, 1984; 49 FR 38950, Oct. 2, 1984; 58 FR 36365, July 7, 1993]

915.972 Special considerations for cost-plus-award-fee contracts.

(a) When a contract is to be awarded on a cost-plus-award-fee basis in accordance with 916.404-2, several special considerations are appropriate. Fee objectives for management and operating contracts, including those using the Construction or Construction Management fee schedules from section 915.971-5, shall be developed pursuant to the procedures set forth in section 970.1509-8. Fee objectives for other cost-plus-award-fee contracts shall be developed as follows:

(1) The base fee portion of the fee objective of an award fee contract may range from 0% up to the 50% level of the fee amount for a Cost-Plus-Fixed-Fee (CPFF) contract, arrived at by using the weighted guidelines or other techniques (such as those provided in 915.971 for construction and construction management contracts). However, the base amount should not normally exceed 50% of the otherwise applicable fixed fee. In the event this 50% limit is exceeded, appropriate documentation

shall be entered into the contract file. In no event shall the base fee exceed 60% of the fixed fee amount.

(2) The base fee plus the amount included in the award fee pool should normally not exceed the fixed fee (as subjectively determined or as developed from the fee schedule) by more than 50%. However, in the event the base fee is to be less than 50% of the fixed fee, the maximum potential award fee may be increased proportionately with the decreases in base fee amounts.

(3) The following maximum potential award fees shall apply in award fee contracts: (percent is stated as percent of fee schedule amounts).

Base fee percent	Award fee percent	Maximum total percentage
50	100	150
40	120	160
30	140	170
20	160	180
10	180	190
0	200	200

(b) Prior approval of the Procurement Executive, is required for total fee (base plus award fee pool) exceeding the guidelines in 915.972(a)(3). Additionally, in the event use of the award fee guidelines exceeds the statutory limitations discussed in FAR 15.903(d)(1) (i), (ii) and (iii), prior approval of the Procurement Executive shall also be required.

[49 FR 11955, Mar. 28, 1984, as amended at 56 FR 28101, June 19, 1991]

Subpart 915.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

915.1003 Debriefings of unsuccessful offerors.

(a) Debriefings must be requested within 10 working days of receipt of notification of elimination from consideration or announcement of selection. Contracting officers shall advise unsuccessful offerors of this limitation in such notification letter(s). Debriefings will be provided at the earliest feasible time, which normally shall be after announcement of the selection decision and prior to award of the contract.

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However, when the exigency of the situation will not permit delaying the award in order to debrief unsuccessful offerors, such debriefing may be conducted after award of the contract. The contracting officer may, if it is decided the facts justify such action, receive and act upon a request received at a later date. Also see 924.202(b).

[49 FR 11955, Mar. 28, 1984; 49 FR 38950, Oct. 2, 1984. Redesignated at 50 FR 12185, Mar. 27, 1985; 59 FR 9105, Feb. 25, 1994]

PART 916—TYPES OF CONTRACTS

Subpart 916.2—Fixed-Price Contracts

Sec.

916.203 Fixed-price contracts with economic price adjustments.

916.203-4 Contract clauses.

Subpart 916.3—Cost-Reimbursement Contracts

916.306 Cost-plus-fixed-fee contracts.

916.307 Contract clauses.

Subpart 916.4—Incentive Contracts

916.404-2 Cost-plus-award-fee contracts.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 11972, Mar. 28, 1984, unless otherwise noted.

Subpart 916.2—Fixed-Price Contracts

916.203 Fixed-price contracts with economic price adjustments.

916.203-4 Contract clauses.

(d)(2) The Head of the Contracting Activity, or designee, for contracts estimated to be within the limits of their delegated authority, may approve the use of an economic price adjustment clause when appropriate in accordance with (FAR) 48 CFR 16.203-4.

[49 FR 11955, Mar. 28, 1984, as amended at 59 FR 9105, Feb. 25, 1994]

Subpart 916.3—Cost-Reimbursement Contracts

916.306 Cost-plus-fixed-fee contracts.

(c)(2) The Head of the Contracting Activity, or designee, for contracts estimated to be within their delegated

authority, may approve (sign) the determination and findings establishing the basis for application of the statutory price or fee limitations.

[49 FR 11955, Mar. 28, 1984, as amended at 59 FR 9105, Feb. 25, 1994]

916.307 Contract clauses.

(j) The contracting officer shall insert the clause at FAR 52.216-15, Predetermined Indirect Cost Rates, modified as specified in 952.216-15 in solicitations and contracts when a cost-reimbursement research and development contract with a State or local government is contemplated and predetermined indirect cost rates are to be used.

Subpart 916.4—Incentive Contracts

916.404-2 Cost-plus-award-fee contracts.

(d) *Fee Determination Plans.* Award fee arrangements limited to technical performance considerations are prohibited because they may increase cost disproportionately to any benefits gained. Instead, the award fee arrangement shall include both technical performance (including scheduling as appropriate) and business management considerations tailored to the needs of the particular situation. In addition, in a situation where cost estimating reliability and other factors are such that the negotiation of a separate predetermined incentive sharing arrangement applicable to cost performance is determined both feasible and advantageous, cost incentives may be added. The resulting contract would then be identified as a cost-plus-incentive-fee/award-fee combination type. The goals and evaluation criteria should be results-oriented. The award fee should be concentrated on the end product of the contract, that is, output, be it hardware, research and development, demonstration or services, together with business management considerations. However, input criteria such as equal employment opportunity, small business programs, functional management areas, such as safety, security, etc., should not be disregarded and may be appropriate criteria upon which to base

some part of the award fee. Specific goals or objectives shall be established in relation to each performance evaluation criterion against which contractor performance is measured.

[49 FR 11955, Mar. 28, 1984, as amended at 59 FR 9105, Feb. 25, 1994]

PART 917—SPECIAL CONTRACTING METHODS

Subpart 917.6—Management and Operating Contracts

Sec.

917.600 Scope of subpart.

917.602 Policy.

917.604 Identifying management and operating contracts.

917.605 Award, renewal, and extension.

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917.7000 Scope of subpart.

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917.7201–1 General.

Subpart 917.73—Program Research and Development Announcements

917.7300 Scope of subpart.

917.7301 Policy.

917.7301–1 General.

Subpart 917.74—Acquisition, Use, and Disposal of Real Estate

917.7401 General.

917.7402 Policy.

917.7403 Application.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 11974, Mar. 28, 1984, unless otherwise noted.

Subpart 917.6—Management and Operating Contracts

917.600 Scope of subpart.

This subpart implements FAR Subpart 17.6, Management and Operating Contracts. DOE implementing procedures and requirements to be followed in the selection, award, and administration of Management and Operating Contracts are at part 970.

917.602 Policy.

(a) It is the policy of the Department of Energy to provide for full and open competition in the award of management and operating contracts, including performance-based management contracts.

(b) A management and operating contract may be awarded or extended at the completion of its term without providing for full and open competition only when such award or extension is justified under one of the statutory authorities identified in FAR 6.302 and only when authorized by the Head of the Agency. Documentation and processing requirements for justifications for the use of other than full and open competition shall be accomplished in accordance with internal agency procedures.

[61 FR 32586, June 24, 1996]

917.604 Identifying management and operating contracts.

(a) Single purpose contracts for the operation of process development units, pilot plants, and demonstration plants where the purpose is to demonstrate the viability of processes toward the goal of commercialization are not considered to be included, unless designated operating contracts in accordance with FAR 17.602.

917.605 Award, renewal, and extension.

Conditional Authorization of Non-competitive Extension Made Pursuant to Authority Under CICA. Authorization to extend by the Head of the Agency shall be considered conditional upon the successful negotiation of the contract to be extended in accordance with the Department's negotiation objectives. The Head of the Contracting Activity shall advise the Procurement Executive no later than 6 months after receipt of the conditional authorization as to whether the Department's objectives will be met and, if not, the contracting activity's plans for competing the requirement.

[61 FR 32586, June 24, 1996]

Subpart 917.70—Cost Participation

SOURCE: 61 FR 41706, Aug. 9, 1996, unless otherwise noted.

917.7000 Scope of subpart.

(a) This subpart sets forth the DOE policy on cost participation by organizations performing research, development, and/or demonstration projects under DOE prime contracts. This subpart does not cover efforts and projects performed for DOE by other Federal agencies.

(b) Cost participation is a generic term denoting any situation where the Government does not fully reimburse the performer for all allowable costs necessary to accomplish the project or effort under the contract. The term encompasses cost sharing, cost matching, cost limitation (direct or indirect), participation in kind, and similar concepts.

917.7001 Policy.

(a) When DOE supports performer research, development, and/or demonstration efforts, where the principal purpose is ultimate commercialization and utilization of the technologies by the private sector, and when there are reasonable expectations that the performer will receive present or future economic benefits beyond the instant contract as a result of performance of the effort, it is DOE policy to obtain cost participation. Full funding may be provided for early phases of development programs when the technological problems are still great.

(b) In making the determination to obtain cost participation, and evaluating present and future economic benefits to the performer, DOE will consider the technical feasibility, projected economic viability, societal and political acceptability of commercial application, as well as possible effects of other DOE-supported projects in competing technologies.

(c) The propriety, manner, and amount of cost participation must be decided on a case-by-case basis.

(d) Cost participation is required for demonstration projects unless exempted by the Under Secretary. Demonstration projects, pursuant to this subpart, include demonstrations of techno-

logical advances and field demonstrations of new methods and procedures, and demonstrations of prototype commercial applications for the exploration, development, production, transportation, conversion, and utilization of energy resources.

Subpart 917.72—Program Opportunity Notices for Commercial Demonstrations

SOURCE: 61 FR 41706, Aug. 9, 1996, unless otherwise noted.

917.7200 Scope of subpart.

(a) This subpart discusses the policy for the use of a program opportunity notice solicitation approach to accelerate the demonstration of the technical feasibility and commercial application of all potentially beneficial non-nuclear energy sources and utilization technologies.

(b) This subpart applies to demonstrations performed by individuals, educational institutions, commercial or industrial organizations, or other private entities, public entities, including State and local governments, but not other Federal agencies. For purposes of this subpart, commercial demonstration projects include demonstrations of technological advances, field demonstrations of new methods and procedures, and demonstration of prototype commercial applications for the exploration, development, production, transportation, conversion, and utilization of non-nuclear energy resources.

917.7201 Policy.

917.7201-1 General.

(a) It is DOE's intent to encourage the submission of proposals to accelerate the demonstration of the technical, operational, economic, and commercial feasibility and environmental acceptability of particular energy technologies, systems, subsystems, and components. Program opportunity notices will be used to provide information concerning scientific and technological areas encompassed by DOE's programs. DOE shall, from time to time, issue program opportunity notices for proposals for demonstrations

of various forms of non-nuclear energy and technology utilization.

(b) Each program opportunity notice shall as a minimum describe: the goal of the intended demonstration effort; the time schedule for award; evaluation criteria; program policy factors; the amount of cost detail required; and proposal submission information. Program policy factors are those factors which, while not appropriate indicators of a proposal's individual merit (i.e., technical excellence, proposer's ability, cost, etc.), are relevant and essential to the process of choosing which of the proposals received will, taken together, best achieve the program objectives. All such factors shall be predetermined and specified in the notice so as to notify proposers that factors which are essentially beyond their control will affect the selection process.

Subpart 917.73—Program Research and Development Announcements

SOURCE: 61 FR 41707, Aug. 9, 1996, unless otherwise noted.

917.7300 Scope of subpart.

(a) This subpart discusses the policy for the use of a program research and development announcement (PRDA) solicitation approach to obtain and select proposals from the private sector for the conduct of research, development, and related activities in the energy field.

917.7301 Policy.

917.7301–1 General.

(a) PRDAs shall be used to provide potential proposers with information concerning DOE's interest in entering into arrangements for research, development, and related projects in specified areas of interest. It is DOE's intent to solicit the submission of ideas which will serve as a basis for research, development, and related activities in the energy field. It is DOE's desire to encourage the involvement of small business concerns, small disadvantage business concerns, and women-owned small business concerns in research and development undertaken pursuant to PRDAs.

(b) The PRDA should not replace existing acquisition procedures where a requirement can be sufficiently defined for solicitation under standard advertised or negotiated acquisition procedures. Similarly, it should not inhibit or curtail the submission of unsolicited proposals. However, a proposal which is submitted as though it were unsolicited but is in fact germane to an existing PRDA shall be treated as though submitted in response to the announcement or returned without action to the proposer, at the proposer's option. Further, the PRDA is not to be used in a competitive situation where it is appropriate to negotiate a study contract to obtain analysis and recommendations to be incorporated in the subsequent request for proposals.

(c) The PRDA is to be used only where:

(1) Research and development is required in support of a specific project area within an energy program with the objective of advancing the general scientific and technological base, and this objective is best achieved through:

(i) A diversity of possible approaches, within the current state of the art, available for solving the problems;

(ii) The involvement of a broad spectrum of organizations in seeking out solutions to the problems posed;

(iii) The application of the unique qualifications or specialized capabilities of many individual proposers which will enable them to perform portions of the research project (without necessarily possessing the qualifications to perform the entire project) so that the overall support may be broken into segments which cannot be ascertained in advance; and,

(iv) The fostering of new and creative solutions.

(2) Consistent with paragraph (c)(1) of this section, it is anticipated that choices will have to be made among dissimilar concepts, ideas, or approaches; and

(3) It is determined that a broad range of organizations exist that would be capable of contributing towards the overall research and development goals identified in paragraph (c)(1) of this section.